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SENATE BILL 1020

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Leonard Lee Rawson

AN ACT

RELATING TO DOMESTIC AFFAIRS; REQUIRING ABATEMENT OF CERTAIN PROCEEDINGS UPON DEATH OF A PARTY TO AN ACTION FOR DISSOLUTION OF MARRIAGE, SEPARATION, ANNULMENT OR DETERMINATION OF PATERNITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 37-2-4 NMSA 1978 (being Laws 1884, Chapter 5, Section 2, as amended) is amended to read:

"37-2-4. WHAT ACTIONS ABATE. -- ~~[SEC. 199.]~~ No action pending in any court shall abate by the death of either or both the parties ~~[thereto]~~ to it, except an action for libel, slander, malicious prosecution, assault or assault and battery, for a nuisance or against a ~~[justice of the peace]~~ magistrate for misconduct in office, or proceedings for determination of paternity, division and distribution of marital property rights

underscored material = new
[bracketed material] = delete

1 and debts or distribution of spousal or child support, which
2 shall abate by the death of the defendant. "

3 Section 2. Section 40-4-20 NMSA 1978 (being Laws 1901,
4 Chapter 62, Section 31, as amended) is amended to read:

5 "40-4-20. FAILURE TO DIVIDE OR DISTRIBUTE PROPERTY ON THE
6 ENTRY OF A DECREE OF DISSOLUTION OF MARRIAGE OR SEPARATION--
7 DISTRIBUTION OF SPOUSAL OR CHILD SUPPORT AND DETERMINATION OF
8 PATERNITY WHEN DEATH OCCURS DURING PROCEEDINGS FOR DISSOLUTION
9 OF MARRIAGE, SEPARATION, ANNULMENT OF MARRIAGE OR PATERNITY. --

10 A. The failure to divide or distribute property on
11 the entry of a decree of dissolution of marriage or of
12 separation shall not affect the property rights of either the
13 husband or wife, and either may subsequently institute and
14 prosecute a suit for division and distribution or with
15 reference to any other matter pertaining thereto that could
16 have been litigated in the original proceeding for dissolution
17 of marriage or separation.

18 B. Upon the filing and service of a petition for
19 dissolution of marriage, separation, annulment, division of
20 property or debts, spousal support, child support or
21 determination of paternity pursuant to the provisions of
22 Chapter 40, Article 4 or 11 NMSA 1978, if a party to the action
23 dies during the pendency of the action, but prior to the entry
24 of a decree granting dissolution of marriage, separation,
25 annulment or determination of paternity, the proceedings for

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1 the determination, division and distribution of marital
2 property rights and debts, distribution of spousal or child
3 support or determination of paternity shall [not] abate. [The
4 court shall conclude the proceedings as if both parties had
5 survived. The court may allow the spouse or any children of
6 the marriage support as if the decedent had survived, pursuant
7 to the provisions of Chapter 40, Article 4 or 11 NMSA 1978. In
8 determining the support, the court shall, in addition to the
9 factors listed in Chapter 40, Article 4 NMSA 1978, consider the
10 amount and nature of the property passing from the decedent to
11 the person for whom the support would be paid, whether by will
12 or otherwise.]"

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